IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO : 22585 of 2004

Between:

I. BALAMANI, W/o. I. Mallikarjuna Sharma,
H.No. 6-3-1243/156, D. Sanjeevaiah Nagar, M.s. Makta, Opposite Raj Bhavan,
HYderabad - 500 082.

..... PETITIONER

AND

1 The Concerned Magistrate for Newspapers-presently Mr. Ismail,
Deputy Commissioner of Police, Office of the Commissioner of Police,
Basheerbagh, Hyderabad - 500 029
2 The Registrar of Newspapers for India (RNI), Wing 2, West Block 8,
R.K. Puram, New Delhi - 110k 066.
3 Government of Andhra Pradesh, Rep. by its Chief Secretary, A.P. Secretariat,
Hyderabad - 500 022.
4 Ministry of Information and Public Relations, Government of India,
Headed and Represented by Sri S. Jaipal Reddy, Union Cabinet Minister, 14,
Akbar Road, New Delhi - 110 011.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate Writ, order or direction, particularly a Writ in the nature of MANDAMUS, to declare that any imposition of user-charges by Respondents 1 and 3 as regards the process of verification of title and filing and receiving of declarations from publishers and printers in connection with newspapers as also the appointment and continuance of top police officers by investing them with executive magistracy as Magistrates for Newspapers is unconstitutional, illegal and ab initio void, with a consequently direction for refund of all the user-charges collected so far in this connection to the respective payers/declarants.; award costs of the Writ Petition to the Petitioner.

Counsel for the Petitioner: MR.I.MALLIKARJUNA SHARMA

Counsel for the Respondents: MR.A.RAJASHEKAR REDDY (ASST.SOLICITOR GEN.)

The Court made the following:

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THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

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WRIT PETITION No.22585 OF 2004

ORDER:

This petition is filed to declare the imposition of user charges for processing the application submitted by the petitioner for registration of a magazine entitled 'Law Animated World' to be published by her as a newspaper is bad and also for a declaration that appointment of police officers, as Executive Magistrates for purposes of Press and Registration of Books Act, 1867 (the Act) is unconstitutional.

(2) The case, in brief, of the petitioner is that she, who is a house wife with post-graduate degree in commerce, is the proprietrix of 'Ravi Sasi Entrepreneurs' and is running the same with the assistance of her husband who is an advocate and is occasionally undertaking publication of socially useful books in English, and had with an intention to print and publish a fortnightly law journal, to report decisions of court and developments in law, with her husband as editor, brought out some trial issues of the magazine entitled 'Law Animated World' and submitted an application in the prescribed proforma on 16-08-2004 to the first respondent for verification of title and requested him to process the same expeditiously for filing the required declaration as per the Act and sent a letter to the Registrar of Newspapers for India (second respondent) enclosing a copy of the trial issue of the journal. Since first respondent did not forward her application to the second respondent, she did not get any response from the second respondent, even after expiry of two months and when she got enquiries made she was informed that payment of user charges of

Rs.2,000/- is a condition precedent for forwarding her application to the second respondent for verification, as per G.O.Ms.No.601 (Finance), dated 22-05-2002. Since there is nothing in the said G.O. to show that payment of user charges of Rs.2,000/- is necessary for verification of title for newspapers, first respondent cannot insist on payment of user charges for verification of title. Since appointment of police officers as Magistrates is frowned upon by Courts, the Deputy Commissioner of Police being designated as Executive Magistrate for verification of title of the petitioner, is improper. Hence, the petition.

(3) First respondent filed his counter-affidavit. The allegations, in brief, therein are on 16-08-2004 petitioner submitted an unstamped application seeking permission to publish a law reporter entitled '*Law Animated World'* at Rs.10/- per copy with a copy of the trial issue dated 15-08-2004 and with a request to forward the same to the second respondent for title clearance. In spite of the petitioner not affixing the requisite court fee stamp to her application, her application was sent to the Inspector of Police, Special Branch City, for verification of character and antecedents of the petitioner, to avoid delay. As per G.O.Ms.No.601 Finance (BG) Department dated 22-05-2002 read with Circular of the DGP I.D.No.16707-08/V6/2002 dated 06-05-2003, an application, for verification of character and antecedents of an employee of a Private Organisation/Agencies or Non-Corporate Sectors, Rs.2,000/- towards user charges has to be deposited and so petitioner was asked to remit Rs.2,000/- towards user charges for verification of her character and antecedents for forwarding the application to second respondent. Petitioner without affixing Court fee of Rs.2/- to her application and without paying the user charges, cannot seek title clearance, nor start a newspaper.

(4) No counter affidavit is filed by or on behalf of second respondent.

(5) The main contention of the learned counsel for the petitioner is that though all the provisions in the Act, which was enacted when this country was under British rule,

were made to prevent publication of seditious newspapers etc., and though some of the provisions of the Act have the effect of curtailing the freedom of speech and expression, which is violative of the fundamental right envisaged in the constitution, since petitioner is not interested in questioning the constitutional validity of the provision of the Act and is interested only in bringing out the magazine as early as possible, is questioning the action of the first respondent in demanding Rs.2,000/- towards user charges, and since designation of a police official as 'Magistrate' under the Act is inconveniencing not only the petitioner, but several others also due to his non-availability in the office, as he is entrusted with several other duties; law and order problems etc., as whenever a representative of the petitioner went to the office of first respondent for information, he was being informed that first respondent is not available and is busy on some other duties, instead of designating a police official as the Magistrate under the Act, regular judicial Magistrate may be designated as the Magistrate for the purpose of the Act since in *V..MOHAN RANGA RAO V. STATE OF A.P.* AND S.BHARATH KUMAR V. THE CHIEF ELECTION COMMISSIONER OF INDIA, the notification, appointing police officers as Executive Magistrates were struck down by this court and since "Police Magistrates" contemplated by Section 1 of the Act are not in vogue after the advent of the Criminal Procedure Code, 1973 (Cr.P.C.)

(6) The contention of the learned Government Pleader is that by virtue of G.O.Ms.No.170, Finance and Planning (FW:BG) Department, dated 23-04-2001 read with G.O.Ms.No.601 (Finance), dated 22-05-2002, first respondent is collecting Rs.2,000/- as user charges for verification of character and antecedents and so the petitioner has to pay the user charges for verification of her character and antecedents for the first respondent to send his remarks to the second respondent, who is the competent authority to issue the licence for starting a newspaper and in any event since the application of the petitioner is not duly stamped, it is not a valid application and so petitioner is not entitled to any relief.

(7) Though the institution of police Magistrates became obsolete, I am unable to agree with the contention of the learned counsel for the petitioner that 'Magistrate' under the Act can only be a Metropolitan Magistrate, but not an Executive Magistrate.

(8) As per Section 5(2) of the Act, a declaration has to be made by the printer and publisher before a District, Presidency or
Sub-Divisional Magistrate i.e., District Magistrate or Presidency Magistrate or Sub-Divisional Magistrate. Since Hyderabad is not a Presidency Town, the Magistrate under the Act can only be a "District Magistrate" or a "Sub-Divisional Magistrate".

As per Section 20 Cr.P.C. State Government has the power to appoint as many persons, as it thinks fit, as Executive Magistrates in a District or Metropolitan area and shall have to appoint one of them as the District Magistrate. Section 20 (5) Cr.P.C. empowers the State Government to confer upon a Commissioner of Police, all or any of the powers of an Executive Magistrate in relation to a Metropolitan area, under any law for the time being in force. So, from Section 20 (5) Cr.P.C., it is clear that the Government can confer all, or any of the powers of an Executive Magistrate, on a Commissioner of Police in a Metropolitan area.

(9) Section 5 of the Hyderabad City Police Act 1348 Fasli reads -"the control and supervision of the aforesaid police force shall, subject to the orders of the Government, be vested in officer which shall be called the Commissioner of City Police, Hyderabad for the city of Hyderabad and who may from time to time be appointed and removed by the Government."

Section 6 of the Hyderabad City Police Act 1348 F enables appointment of Deputy and Assistant Commissioners of Police in the city of Hyderabad. As per Section 6 (2) of Hyderabad City Police Act 1348 F every Deputy Commissioner of Police shall, subject to the orders of the Commissioners of City Police, Hyderabad, be competent

to exercise all powers or perform some of the duties which are required to be performed by the Commissioner of City Police, Hyderabad under this Act or any other enactment for the time being in force. Obviously on the basis of the above Section 6(2) of Hyderabad City Police Act,

1348 F, first respondent is given the power to act as the 'Magistrate' under the Act. But such delegation is not a valid delegation because Section 20 (5) Cr.P.C. empowers the Government to confer the powers of an Executive Magistrate only on the 'Commissioner of Police' in any area and such power conferred on an officer cannot be delegated to his subordinate officer. Since there can only be one Commissioner of Police for Hyderabad, it is the Commissioner of Police that can exercise any of the powers of a District Magistrate, if conferred on him.

(10) Learned Government Pleader did not produce any notification to show that Commissioner of Police, Hyderabad was conferred with any of the powers of a 'District Magistrate' by the Government. Similarly no notification authorizing, first respondent to perform the duties of a Magistrate under the Act is produced. As stated early, even if such a notification was issued, the same is invalid because question of the Commissioner of Police delegating powers of an Executive Magistrate vested in him by the Government under Section 20 (5) Cr.P.C. cannot be delegated by him to any other officer. So, first respondent cannot act as 'Magistrate' for the purpose of Section 5 of the Act. It is only the Commissioner of Police, if he is vested with the power of 'District Magistrate', for the purpose of the Act by the Government, that can act as the 'Magistrate' under the Act.

(11) *V.Mohan Ranga Rao's* case, relied upon by the learned counsel for the petitioner, relates to the Government appointing Superintendent of Police, Urban Police District as Special Executive Magistrate for the Vijayawada Urban Police District and conferring on him the power to deal with cases under Sections 107, 108,

110, 133, 143 to 145 Cr.P.C., by virtue of the power vested in it by Section 21 Cr.P.C. Keeping in view the fact that Central Act 63 of 1980 took out from the Judicial Magistrates, the powers under Sections 107 to 110 Cr.P.C. and conferred those powers on the Executive Magistrates, the Division Bench in the above case observed:

> "In a given case the possibility of calling upon the poets of civil society, under Sections 107, 108 and 133 or suspects or habitual offender in a proceeding under Section 109 and 110 of the Code to furnish excessive bond so as to see that the citizen (indigent) cannot make avail of the right to be free, cannot be ruled out and as a result he has to anguish behind the bars losing his legitimate fundamental personal liberty affecting his reputation. Thereby, it not only sullies the stream of justice at its source but also chills the confidence of the general public and is detrimental to rule of law, and erosion to the efficacy thereof. Therefore, a person having an interest in the outcome of the action shall not be made a Judge"

and struck down the notification inasmuch as a prosecutor cannot be a Judge.

(12) In *S.Bharath Kumar's* case (2 supra) notification confers power to deal with cases under Sections 107 and 110 Cr.P.C., by appointing some Superintendent and Deputy Superintendent of Police as Executive Magistrates for their exercising control over the sympathizers of left wing extremists groups, was struck down by this Court on the ground that it suffered from three vices i.e., doctrine of vagueness, usurpation of legislative functions and violation of Article 21 of the Constitution of India.

(13) The above two decisions have no application to the facts of this case, because the role of the 'Magistrate' under the Act is only to take a declaration and to verify the antecedents of a printer and the publisher of a magazine. It is well known that Judicial Magistrates, do not have the necessary infrastructure or the personnel to make an enquiry into the antecedents of a printer or publisher. Only police persons can make an enquiry into the antecedents of a printer and publisher. If Commissioner of Police is vested with the power of the District Magistrate for the

purpose of the Act, such vestity can, by no stretch of imagination, be said to be placing him in the position of a judge and prosecutor, as under the Act the 'Magistrate' does not discharge any judicial functions. He only makes an enquiry into the antecedents of the printer and publisher and receives a declaration under Section 5 of the Act. So the Government can appoint the Commissioner of Police of Hyderabad as 'District Magistrate' for the purpose of the Act.

(14) Except G.O.Ms.NO.170, Finance and Planning (FW:BG) Department, dated 23-04-2001 and G.O.Ms.No.601 (Finance), dated 22-05-2002, no other proceedings are produced before me to show that the police department can collect user charges. From a reading of the counter-affidavit of first respondent it is seen that as per Circular of the DGP, dated 06-05-2003 whenever a person applies for verification of character and antecedents of employees of a private organization or non-corporate sectors, a sum of Rs.2,000/- has to be remitted to the Government as charges for verification of their character and antecedents. A person who wants to establish a newspaper is not asking for the verification of antecedents of anybody, since he after giving information about himself states that he is establishing a newspaper. Since the Registrar has to know the antecedents of the printer and publisher, for him to grant or reject the application, police have to verify the antecedents of the printer and publisher. Thus police would be assisting the second respondent by reporting to him about the antecedents of the person who wants to start a newspaper. Had the petitioner sought for the antecedents of some person or an employee in her organization, it is a different matter the police have to perform an extra duty of finding out the antecedents of an individual, for the benefit of a private person or organization, and so they can collect some charges for rendering services to the private persons or an organization but when they are discharging the duty on behalf of second respondent, to enable him to come to conclusion whether or not to grant permission to start the newspaper, question of the petitioner being called upon to

pay user charges does not and cannot arise, because it is a part of the duty of the police to inform the second respondent about the antecedents of the petitioner. So the contention of the petitioner that first respondent has no power or authority to collect user charges has to be accepted.

(15) Since the contention of first respondent that petitioner did not affix Court fee is not denied or disputed by the petitioner by filing a reply affidavit, it is clear that she did not affix the requisite court fees to her application. As per Section 4 of the A.P. Court Fees and Suits Valuation Act, 1956, no document chargable with fee under that Act cannot be acted upon. The application filed by the petitioner falls either under Article 10 (K) or Article 11 of Schedule II to that Act and so application has to be affixed with Court fee stamp of one Rupee. The learned Government pleader is not able to show the provision under which a stamp of Rs.2/- as stated in the counter affidavit of the first respondent has to be affixed to an application filed before a Magistrate.

Since the application of the petitioner is not stamped, in view of Section 4 of A.P. Court Fees and Suits Valuation Act, 1956, first respondent did not commit any error in not acting on such application.

(16) In these circumstances, holding the first respondent has no power to act as Magistrate under the Act, and that it is only the Commissioner of Police, if he is vested with such power under Section 20 Cr.P.C. or the Collector, Hyderabad District that can act as the 'Magistrate' under the provisions of the Act, and holding that collection of user charges for processing an application under the Act does not have the sanction of any law for the time being in force, petitioner is given liberty to file a proper application before the District Magistrate, Hyderabad for processing her application under the Act. The writ petition is disposed of accordingly. No costs.

(C.Y.SOMAYAJULU, J)

Dated: 25-04-2005

Lrkm

To

1 The Concerned Magistrate for Newspapers-presently Mr. Ismail, Deputy Commissioner of Police, Office of the Commissioner of Police, Basheerbagh, Hyderabad - 500 029

2 The Registrar of Newspapers for India (RNI), Wing 2, West Block 8, R.K. Puram, New Delhi - 110k 066.

3 The Chief Secretary, Government of Andhra Pradesh, A.P. Secretariat, Hyderabad - 500 022.

4 The Ministry of Information and Public Relations, Government of India, Headed, Union Cabinet Minister, 14, Akbar Road, New Delhi - 110 011.

5. 2 C.D. copies.